

STATE OF MICHIGAN
COURT OF APPEALS

JEREMIAH R. WONNACOTT, Personal
Representative of the Estate of THOMAS
RICHARD WONNACOTT, Deceased,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

UNPUBLISHED
December 13, 2002

No. 232936
Court of Claims
LC No. 00-017584-CM

VICKI ALLEN HARRELL,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

No. 232937
Court of Claims
LC No. 00-017585-CM

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

In these consolidated cases plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm in both cases. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

In separate accidents, decedent Wonnacott was killed and plaintiff Harrell was injured when the vehicles they were driving collided with other vehicles at the intersection of M-50 and M-99 in Eaton County. Plaintiffs filed separate complaints alleging that the intersection was negligently designed and constructed, and, thus, was not reasonably safe for public travel. Plaintiffs also alleged that defendant failed to post adequate warning signs and traffic control devices. The trial court consolidated the cases for purposes of hearing and decision.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (8) in each case, arguing that it was entitled to governmental immunity because plaintiffs' claims of design

defects and inadequate signage did not fall within the applicable highway exception to governmental immunity. The trial court granted the motion in each case, finding that nothing in the language of the highway exception encompassed design defect claims or claims for defects outside the actual roadbed designed for public travel, including claims of inadequate signage.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Generally, a governmental agency is immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407. There are several narrowly drawn exceptions to governmental immunity, including the highway exception. This exception requires a governmental agency having jurisdiction over a highway to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). MCL 691.1402 imposes duties and liability on state and county road commissions only for the improved portion of the highway.

The scope of the highway exception to governmental immunity has been the subject of several recent decisions. In *Pick v Szymczak*, 451 Mich 607, 621; 548 NW2d 603 (1996), our Supreme Court held that the duty to maintain a highway in reasonable repair included the duty to erect warning signs or traffic control devices at a "point of hazard" or a "point of special danger." A "point of hazard" or a "point of special danger" was deemed to be a condition that directly affected vehicular travel on the improved portion of the roadway so that travel was not reasonably safe. *Id.* at 623.

However, *Pick* was overruled by *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 179-184; 615 NW2d 702 (2000), and its companion case, *Evens v Shiawassee Co Rd Comm*. The *Nawrocki* Court held that the highway exception did not contemplate conditions arising from points of hazard or special dangers outside the actual roadbed designed for vehicular travel. See *id.* The *Nawrocki* Court also held that state and county road commissions have no duty under the highway exception to install, repair, maintain, or improve traffic control devices, including signs and lighting. See *id.*

Plaintiffs contend that *Nawrocki* overturned clear and uncontradicted case law, and, thus, should be given prospective effect only. However, we rejected that argument in *Adams v Dep't of Transportation*, ___ Mich App ___, ___ NW2d ___ (Docket No. 230268, issued 10/11/2002) slip op p 5.

Plaintiffs further contend that *Nawrocki* did not bar claims of negligent design. Although *Nawrocki* did not involve defective design claims, the Court suggested that defective design claims would be excluded from the highway exception. *Nawrocki*, *supra* at 179-181. Regardless, in *Hanson v Mecosta Co Rd Comm's*, 465 Mich 492, 502-504; 638 NW2d 396 (2002), our Supreme Court held that state and county road commissions have no duty under the highway exception to improve upon or correct defects arising from the original design of a roadway. Accordingly, plaintiffs' claims of inadequate signage and traffic control devices, as well as defective design, fail to plead facts in avoidance of governmental immunity under *Nawrocki* and *Hanson*. Summary disposition was properly granted.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh